

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	CAUSE NO. 3:09-CR-62(04) RM
	)	
LAWRENCE MERRITT	)	

OPINION and ORDER

Lawrence Merritt has filed a “Motion for Remand” in which he asks that he be resentenced based on provisions of the Fair Sentencing Act of 2010. In August 2009, Mr. Merritt pleaded guilty to distribution of over five grams of cocaine base in violation of 21 U.S.C. § 841(a)(1) and was sentenced on December 3, 2009 to a statutory minimum sentence of 60 months. 21 U.S.C. § 841(b)(1)(B). At the time of Mr. Merritt’s sentencing, 21 U.S.C. § 841(b)(1)(B) provided that an individual who distributes 5 grams or more of crack cocaine “shall be sentenced to a term of imprisonment which may not be less than 5 years.” The Fair Sentencing Act of 2010 amended the sentencing provisions of 21 U.S.C. § 841(b)(1)(A)(iii) by raising the amount of crack cocaine necessary to trigger the five year mandatory minimum from at least 5 grams to at least 28 grams. See Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, at § 2(a)(2), effective Aug. 3, 2010. Mr. Merritt claims the court should modify his sentence accordingly.

The United States Code provides that

[t]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

1 U.S.C. § 109. Mr. Merritt hasn't pointed to any provision of the Fair Sentencing Act of 2010, which took effect eight months after he was sentenced, that expressly provides that that Act is to be applied retroactively to cases, like Mr. Merritt's, where final judgment has been entered. The court has found no such provision.

Because Mr. Merritt isn't entitled to the relief he seeks under the Fair Sentencing Act of 2010 and he has cited no other legal authority that would permit consideration of his motion for reduction of sentence, the court DENIES his Motion for Remand [docket # 92].

SO ORDERED.

ENTERED: October 8, 2010

/s/ Robert L. Miller, Jr.  
Judge, United States District Court

cc: L. Merritt  
AUSA Schaffer